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EXAMINER

WESTERBERG, NISSA M

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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The rejections under 35 USC 103(a) of claims 1, 3 – 5, 8 – 10 and 12 over Dalle et al. (US 6,013,682; '682 patent) in view of Lochhead et al. (1993) or Sang et al. (US 6,143,310) in view of Dalle et al. (US 6,013,682) are MAINTAINED for the reasons of record set forth in the Office Action mailed April 24, 2009 and those set forth below.

Applicant traverses this rejection on the grounds that contrary to the assertions of the examiner, emulsions are formed in the '682 patent, the order of addition of ingredients are the same in the '682 patent and in one of the comparative examples 1 – 3 of the instant applications, similar ratios of components are utilized and this ratio is irrelevant as this is not a claimed feature and mixtures of ethers are not included in one of the examples of the instant application.

These arguments are not found persuasive. The comparisons must be made between the compositions of the instant application and the cited prior art. Thus, similar but not identical ratios of ingredients and the same order of addition in one but not all three examples mean that a proper comparison being made is not with the closest prior art. The emulsions prepared in '682 include laureth-3 and laureth-23, ingredients which are not present in the comparative examples 1 – 3 of the instant specification. While the ratio of ingredients in the comparative examples of the instant application and '682 may be similar, that is not sufficient. The ratio of these components determines the structure of the polymer that is obtained. From the information provided, the Examiner cannot determine if the three examples of component (A) given are sufficient to establish a

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trend that encompasses all linear organosilicon polymers with a main chain composed of diorganosiloxane units and alkylene units. As the claims are silent to this ratio, the claims do, as pointed out by Applicant, encompass all such polymers. While Applicant need not present data for all compositions encompassed by the claims, there is insufficient evidence to show a trend that would provide support for the entire claimed range.

The compositions of the instant claims contain two components, component (A) which has been discussed above, but also component (B), an oil that is liquid at room temperature and does not contain hydrosilation-reactive groups. The examples discussed in regards to the unexpected results on make use of one such oil. From one data point, it is difficult to establish a trend that supports unexpected results for all such oils that meet this limitation.

Therefore, the examples discussed are not a comparison with the closest prior art and are not sufficient to rebut the prima facie case of obviousness for the full breadth of the claims. Therefore, the rejections are maintained.